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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,465	12/06/2001	Stephen J. Cutler	43257	5845

1609 7590 10/17/2005

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WASHINGTON,, DC 20036

EXAMINER

PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 10/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/003,465

Applicant(s)

CUTLER ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 1,3-14 and 16-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) 27-31 and 36 is/are allowed.
- 6) ☐ Claim(s) 1,3,4,7,8,13,16,18-24,32 and 33 is/are rejected.
- 7) ☐ Claim(s) 5,6,9-12,14,17,25,26,34,35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

I. Rejection of claims 1,3,5,7,8,16 under 35 USC 102(b) as being anticipated by Giddings will not be maintained. Applicant has deleted algae from the claims.

#### ***Claim Rejections - 35 USC § 112***

Claims 34,35 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It is improper for composition claims to depend from method claims.

II. New Ground of 103(a) rejection is set forth below

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1,3,4,7,8,13,16,18-24,32, and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Giddings on record. Giddings teaches a method of contacting algae infested water with p-benzoquinone to control said algae growth. Giddings differ from the claims in that Giddings discloses algae whereas the instant claims are to plants. However, algae is species in the plant genus. Also note that holoplanktonic organisms - blue green algae, meroplanktonic organisms – benthic plants, Biota – sea grass, pyrrrophyta – algae are types of plants. For this reason, Giddings makes obvious

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the instant invention. Giddings does not teach the invention comprising the instant amount of benzoquinone to be added to the water or the time period for contact of p-benzoquinone to the algae infested water. It would have been obvious to one having ordinary skill in the art to determine the optimum amount of p-benzoquinone to add to the algae infested water and the optimum time period for p-benzoquinone contact in infested water. One would have been motivated to do this in order to develop the most effective invention for the control of algae growth in the algae infested water.

***Claim Objection / Allowable Subject Matter***

Claims 5,6,9-12,14,17,25,26 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The prior art does not teach or suggest the invention comprising the pests of these claims. The prior art does not teach or suggest the invention comprising ballast water reservoir or 2,3-methoxy-5-methyl-1,4-benzoquinone. Claims 27-31, 36 are allowable. The prior art does not teach or suggest the instant invention being employed to control mollusk.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 571-272-0621. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Kunz can be reached on 571-272-0887. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Alton Pryor', is positioned above the printed name.

Alton Pryor  
Primary Examiner  
AU 1616